

Section 13a.8 of the Motor Fuel Tax Law, 35 ILCS 505/13a.8, allows licensed receivers to file claims for credit. These provisions, however, do not apply to unlicensed receivers. (This is a GIL.)

April 14, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 13, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is to request a refund or credit of Environmental Impact Fees (Environmental Fees) paid by ABC from May 17, 2005 through September 30, 2005, during which time the above referenced former license had been revoked and the current license had not yet been issued. The Environmental Fee refund or credit requested totals approximately \$25,432.

While seeking a refund of Motor Fuel Tax paid during the time frame described above, INDIVIDUAL of your Division informed ABC that he was unaware of a statutory or regulatory procedure whereby ABC could seek a refund of improperly paid Environmental Fees from the Illinois Department of Revenue. That information is what prompted this letter to you.

After researching this issue, it is apparent there is a statutory obligation on behalf of the Department to make such refund or credit. Below is a brief discussion of the laws governing the Environmental Fee and obligations of the Department to refund or credit such fee:

Environmental Impact Fee Law (415 ILCS 125)

The Environmental Impact Fee Law, Section 310 provides that ‘all receivers of fuel are subject to an environmental impact fee of \$60 per 7,500 gallons of fuel, or an equivalent amount per fraction thereof that is sold or used in Illinois. The fee shall be paid by the receiver in this State who first sells or uses the fuel.’

Section 305 defines ‘Receiver’ as ‘a person who is licensed under Section 3c of the Motor Fuel Tax Law and who either produces, refines, blends, compounds or manufacturers fuel in this State, or transports fuel into this State or received fuel transported to him from without the State or exports fuel out of the this [sic] State, or who is engaged in distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant that has active fuel bulk storage capacity of not less than 30,000 gallons’.

Section 320 of the Law provides that all money collected shall be deposited into the Underground Storage Tank Fund created by Section 57.11 of the Environmental Protection Act.

Section 325 incorporates several sections of the Motor Fuel Tax Law. This section specifically provides that Section 13a.8 (which deals with refunds/credits) ‘shall apply as far as practicable, to the subject matter of this Law to the same extent as if those provisions were included in this Law’.

Environmental Protection Act (415 ILCS 5/57.11)

Section 57.11 of the Environmental Protection Act creates the Underground Storage Tank Fund. It provides that moneys in the Fund ‘may also be used by the Illinois Department of Revenue for the costs of administering its activities relative to the Fund and for refunds provided for in Section 13a.8 of the Motor Fuel Tax Law’.

Motor Fuel Tax Law (35 ILCS 505)

Section 2a governs the tax on receivers of fuel for sale or use. It goes on to provide that ‘no such tax shall be imposed when the sale is made with delivery to a purchase outside this State or when the sale is made to a person holding a valid license as a receiver’.

Section 8a of the Law provides that all moneys collected under Section 2a is deposited into the Underground Storage Tank Fund

Section 13a.8 provides that ‘Any receiver who has paid the tax imposed by Section 2a of this law (either directly to the Department or to another licensed receiver) upon fuel exported or sold under the exemptions provided in Section 2a may file a claim for credit to recover the amount so paid’.

Summary

The Environmental Impact Fee Law establishes the Environmental Fee. The moneys are deposited into the Underground Storage Tank Fund. The Motor Fuel Tax Law provides for refunds/credits of fees and taxes that should not have been paid. The Environmental Impact Fee Law specifically incorporates the refund provisions of the Motor Fuel Tax Law. Thus, under Section 13a.8 of the Motor Fuel Tax Law, ABC is eligible to receive a refund or credit for the Environmental Fees paid and deposited into

the Underground Storage Tank Fund. The Environmental Fees should not be treated any differently than Motor Fuel Taxes for purposes of a refund.

Please advise [sic] of the Department of Revenue's position on the Environmental Fee refund or credit sought by ABC. ABC will provide documentation regarding Environmental Fees paid upon request.

I look forward to hearing from you soon.

DEPARTMENT'S RESPONSE

Your letter was transferred to the Legal Services Office from the Motor Fuel Division.

Section 2a of the Motor Fuel Tax Law, 35 ILCS 505/2a, imposes an Underground Storage Tank Tax at the rate of three-tenths of a cent per gallon upon the privilege of being a receiver in this State of fuel for sale or use. In addition, Section 310 of the Environmental Impact Fee Law, 35 ILCS 125/310, imposes upon all receivers of fuel an environmental impact fee of \$60 per 7,500 gallons of fuel, or an equivalent amount per fraction thereof, that is sold or used in Illinois. The receiver in this State who first sells or uses fuel shall pay such tax and fee.

Section 3c of the Motor Fuel Tax Law, 35 ILCS 505/3c, provides that no person shall act as a receiver of fuel within this State without first securing a license from the Department to act as a receiver of fuel. Licensed receivers may make tax-free sales of fuel to other licensed receivers in Illinois. However, tax is due when a licensed receiver makes a sale to an unlicensed receiver. Licensed receivers may also make tax-free sales of fuel which are delivered to points outside of Illinois.

Section 13a.8 of the Motor Fuel Tax Law, 35 ILCS 505/13a.8, allows licensed receivers to file claims for credit. These provisions, however, do not apply to unlicensed receivers.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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